IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FOURTH DAY OF MARCH

TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE THE CHIEF JUSTICE SHRI DEVINEDER GUPTA

THE HON'BLE SHRI JUSTICE B. SUDERSHAN REDDY

THE HON'BLE SHRI JUSTICE L. NARASIMHA REDDY

THE HON'BLE SHRI JUSTICE C.V. RAMULU

AND

THE HON'BLE SRI JUSTICE B. SESHASAYANA REDDY

Writ Petition No.14939 of 2004

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Between

Bhimidipati Annapoorna Bhavani,

W/o Late Sri Satyanarayana Murthy,

R/o 7-2-13, Nageswara Rao Street, Ramaraopeta, Kakinada,

East Godavari district, Andhra Pradesh.

…..PETITIONER

And

1. The Land Acquisition Officer, Yeluru Reservoir Project, Peddapuram, East Godavari district, Andhra Pradesh.

2. The District Collector, East Godavari district at Kakinada.

3. The Secretary to the Govt of A.P., Revenue Department, Secretariat, Hyderabad.

4. The Secretary, Irrigation & Command Area Development Department, Govt of AP, Hyderabad.

5. The Chief Engineer, V.Y.P.P. Unit, Dowlaiswaram, East Godavari district

(RRs 4 and 5 are impleaded suo motu by order dated 21-9-2004 in WP 14939 of 2004)

…Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an order, direction, or a writ, more particularly one in the nature of writ of mandamus to call for records and remarks from the respondents herein regarding non-payment of compensation for the lands of the petitioner situated in survey Nos.308, 314, 315, 403 and 410 in J.Annavaram village, acquired under Yeleru Reservoir project under Award No.19 of 1988, dt 15-10-1998 and Award No.4 of 1990, dt.15-2-1990 in spite of the directions of the High Court to the concerned authorities to pay compensation amount of Rs.35,000/- per acre in S.Nos.403, 410 of J.Annavaram village in OP No.24 of 1992 in its judgment dated 7-2-2003 in AS No.1722 of 2000 on the file of the High Court and an amount of Rs.30,000/- per acre in S.No.308, 314 and 315 of J.Annavaram village in OP No.280 of 1990 in its judgment dated 14-03-2003 in As No.1760 of 2000 on the file of the High Court and failure of payment to the petitioner even though she filed execution petitions E.P.Nos.104 of 2000 in OP No.280 of 1990 and EP No.105 of 2000 in OP No.24 of 1992 on the file of the Court of the Senior Civil Judge, Peddapuram, East Godavari district (2) Not allowing the petitioner to participate in the bidding on her own, resulting in petitioner's not being able to obtain the just compensation due to her in spite of completion of the judicial process at both the lower court and the High Court, (3) to direct all the concerned authorities to hand over the declared compensation amounts to the petitioner including additional payment of 30% solatium and 12% additional market value as solatium has not been paid in time to enable the petitioner to live in this materialistic world peacefully due to old age.

JUDGMENT: (Per the **HON'BLE THE CHIEF JUSTICE SHRI DEVINDER GUPTA)**

Reference to the Larger Bench is on the question of correctness of decision of Full Bench of this Court in **VEMULA PRABHAKAR AND OTHERS v. THE LAND ACQUISITION OFFICER AND R.D.O., PEDDAPALLI, KARIMNAGAR AND ANOTHER.**

The Full Bench in the aforesaid decision held that no writ can be issued for implementing the awards passed by the Civil Courts in land acquisition proceedings taken out under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') on the ground that an alternate and efficacious remedy of seeking execution of the award as a decree of Civil Court in accordance with the provisions of Code of Civil Procedure, 1908, is available under the Act. While holding so, the Full Bench expressly overruled the decisions of this Court in **SUR REDDY v. THE SPL. DEPUTY COLLECTOR (LA), MEDAK, BILLA LINGA REDDY v. R.D.O., B. GOVINDA REDDY v. REVENUE DIVISIONAL OFFICER-CUM-L.A.O.** and **K. MURALIDHAR REDDY AND OTHERS v. THE SPECIAL DY. COLLECTOR, L.A. UNIT, GADWAL AND OTHERS.**

Facts giving rise to the reference to Larger Bench are that a letter received from one Smt. Bhamidipati Annapoorna Bhavani dated 9.8.2004 was taken on judicial side as Taken up Writ Petition by the 1st Division Bench. In the letter, she made grievance that pursuant to proceedings taken out under the provisions of the Act, she was deprived of her land to the extent of Ac.4.95 cts situated in J. Annavaram village,

East Godavari District, for the purpose of Yeleru Project in the year 1987. The Land Acquisition Collector had passed awards on 15.10.1988 and 15.2.1990 in respect of the lands acquired in the village by offering paltry sum as compensation against which reference was sought to Civil Court. The amount of compensation was thus determined by the Civil Court on 11.4.1999 in O.P.Nos.280 of 1990 and 24 of 1992. Against the awards of the reference Court, appeals were preferred by the State Government to the High Court and then to the Supreme Court. The Supreme Court thus settled the amount of compensation finally. The grievance, which the petitioner made, is that though the compensation payable to her had finally been settled, the State Government had failed to deposit the amount of compensation. Thus, she was driven to seek execution of the award in order to realise the amount of compensation. During execution, all sorts of frivolous objections were raised on behalf of the State Government thereby depriving her the fruits of the award. She being an old lady of 92 years has not yet seen the colour of the money even after seventeen years from the date when she was deprived of the land. She has been of deprivation of her land. She has been unable to realise the money awarded under the awards because of frivolous objections being raised by the State Government to the execution of the awards.

On notice being issued, the Division Bench called upon the respondents to furnish information as to what the State Government is proposed to do as regards payment of compensation in cases where compensation had finally been settled and in which no appeals were pending. This information was sought since number of such matters had come to the notice of the Court in which for years together even after final determination of the amount of compensation, payable as per law, the State Government had not bothered to deposit the amount of compensation to enable the persons, who had been deprived of their property, to take benefit of the amount. The Bench also noticed that the dockets of almost all Courts dealing with land acquisition matters throughout the State was heavy, more particularly, due to execution proceedings pending. The Bench also noticed that for one reason or the other, execution petitions were not being allowed to proceed thereby the persons whose lands were acquired for public cause were being deprived of their legitimate amount of compensation determined by the Civil Courts. In some cases, even coercive steps were ordered attaching the property of the State Government. After the attachment was ordered in the execution proceedings, even at the stage of sale,

objections are being filed on behalf of the State that the properties are not liable for attachment. Thus executing courts' attention is diverted for deciding such objections resulting in unnecessary wastage of precious time of the Courts. On the other hand, execution petition can be got disposed of easily by depositing the amount by the State.

In the aforementioned background, information was furnished by the respondents which discloses that about 1654 awards had been passed by the Land Acquisition Collectors from time to time in almost all the districts of the State with respect to the special projects for which land to the extent of Ac.57,467.94 had been acquired. The total amount of compensation payable for the acquired land is Rs.215,03,66,251.00. Even out of this amount of compensation, only 1/4th amount has so far been deposited and the balance of Rs.160,56,06,276.00 still remains to be deposited. Amount of compensation referred to is only towards the costs of land acquired for special projects and not for the house sites. Insofar as land acquired for the purpose of house sites are concerned, as many as 445 awards were passed by the Land Acquisition Collectors throughout the State involving land to the extent of Ac.11,923.25. The amount of compensation required to be deposited is about Rs.20,74,91,655.00. State Government had deposited only Rs.8,47,47,648. The balance amount of Rs.11,94,02,618.00 is yet to be deposited.

It was brought to the notice of the Bench that the figures furnished were of those cases where the amount of compensation had finally been settled. The cases where compensation had not yet been finally settled had not been taken into consideration while furnishing the said information. If all such cases been taken into consideration, the amount required to be deposited by the State would go beyond the figures furnished. When the case was taken up for consideration, attention of the reference bench was drawn to the Full Bench decision of this Court in **VEMULA PRABHAKAR AND OTHERS v. THE LAND ACQUISITION OFFICER AND R.D.O., PEDDAPALLI, KARIMNAGAR AND ANOTHER** (supra) which had held that no writ would be issued to the State directing it to make payment of the amount of compensation. The only remedy of the claimants would be to work out their remedies by taking out execution proceedings in Civil Courts seeking execution of the awards. As such, the claimants are driven to file execution petitions.

Having gone through the Full Bench decision of this Court in **Vemula Prabhakar's**

case, the Reference Bench was of the view that the said decision requires reconsideration and that is how the present reference was made to the Larger Bench.

We hard learned Advocate General who has very ably put forth before us various decisions having relevance. We will first refer to various decisions of this Court dealing with the issue.

In K**. Muralidhar Reddy's** case the facts were that the land of the petitioners therein was acquired for the purpose of constructing Earth Dam PJP Left Bank of Nandimalla village, Gadwal. Section 4(1) notification was issued on 26.9.1981 and award was passed on 31.8.1982. On reference, the Civil Court passed award on 26.4.1990 enhancing compensation. The State carried the matter in appeal to the High Court wherein no stay was granted as regards payment of compensation. The claimants filed execution petition for realisation of compensation amount and obtained order of attachment of movable properties belonging to the respondents therein. The learned single Judge noticed that the Civil Courts are placed in helpless situation when the respondents are seeking time repeatedly on one pretext or the other taking inconsistent pleas before it, that the appeals are pending before the High Court and sufficient amounts are not available to discharge the obligation. It was also noticed that the authorities were adopting various methods of pick and choose in paying compensation. In W.A.No.1044 of 1988 this Court had given direction to the respondents to make payments strictly in accordance with the seniority, that is to say, the persons whose OPs are disposed of earlier should be paid earlier. In this background, it was held that it was not open for the respondents to say that alternate remedy was available to the petitioners by filing execution proceedings and they cannot invoke the jurisdiction of this Court under Article 226. Where there is no stay as regards payment of compensation, it is not open to the respondents to excuse themselves from making payment on the pretext that appeals are pending before the High Court. Placing reliance on the decision of the Supreme Court in **THE COMPTROLLER & AUDITOR GENERAL v. K.S. JGANNATHAN** and noticing that even after twelve years the legitimate compensation to which the claimants were entitled, if denied would cause injustice to the claimants, learned single Judge held that mere pendency of appeals or availability of alternative remedy in execution proceedings cannot be a ground for the respondents to excuse

themselves in discharging their obligation, which they are bound to discharge and the writ Court is competent to direct the respondents to act upon and pay the compensation to the claimants.

In **Billa Linga Reddy's** case, the writ petition was filed seeking directions to the State to pay compensation in accordance with the award of the reference Court. In this case, notification under section 4(1) was issued followed by declaration under section 6(1) of the Act in 1977. Collector made his award on 15.1.1979 determining the compensation and on reference, the Civil Court passed award on 24.12.1983 enhancing the amount of compensation. When compensation amount was not paid writ petition was filed in which a preliminary objection was raised by the learned Government Pleader that since judgment had been rendered by the reference Court, the remedy available to the petitioners was to seek execution of the award by initiating proceedings before the executing Court and the petitioners cannot be permitted to resort to proceedings under Article 226 of the Constitution, therefore, the writ petition was not maintainable. Learned single Judge taking note of the facts of the case and the nature of objection, held that the objection might be tenable so far as ordinary suits are concerned, but in a case where the property of a person is deprived for public purpose, the same can be done only through due process of law and not otherwise. After 44th Constitution Amendment Act, 1976 which had come into effect from 20.6.1979, such right was transformed as a constitutional guarantee under Article 300-A of the Constitution. The object and intendment of the Amendment Act is to see that the person deprived of his property for public purpose should be paid money at the earliest possible time so as to rehabilitate himself somewhere else. If this was not done, certainly due process of law is violated. Due process of law is not to be taken just as a technical observation of the rules or procedure but should be taken to effectively compensate the person. It can be done by determining and paying the compensation amount at the earliest possible time, more so, when prices have been raising leaps and bounds. In this background, it was held that it was permissible for such a person to invoke the extraordinary jurisdiction of the Court and it was also permissible for this Court to issue appropriate directions in such cases.

In **Sur Reddy's** case, a learned single Judge of this Court held that alternative remedy by way of execution proceedings is not an absolute bar in filing writ petition under Article 226 of the Constitution. In this case, possession of the land had been

taken in the year 1982 after notification under section 4(1) was issued on 13.7.1982 dispensing with the enquiry under Section 5-A. Award came to be passed on 19.12.1985 and the reference Court answered the reference on 31.7.1989. Appeal was preferred by the State Government, which was dismissed on 21.1.1994. Compensation was not paid to the persons who had been deprived of the property. When the petitioners approached this Court by filing writ petition, they were faced with an objection raised on behalf of the State Government about the maintainability of such a petition in view of the alternative remedy available to the petitioner for due execution of the award. Learned single Judge held that mere existence of alternate remedy does not deter the Court in exercise of its extraordinary jurisdiction to extend its protective umbrella to a citizen and see that his just claims are not defeated by technicalities. Though the learned single Judge took a different view that execution proceedings contemplated for execution of decrees of Civil Court is not a remedy provided under the Act but assumed that, even if such an execution petition is maintainable, it was not an effective and efficacious remedy, as, it is a time consuming process. It was held that the High Court has ample power to exercise its plenary jurisdiction to compel the State authorities to act in accordance with law and pay award amount. Writ petition was thus held to be maintainable.

In **B. Govinda Reddy's** case writ petition was filed fifteen years after the claimants were deprived of their possession and no compensation was paid to them. Though possession was taken on 1.12.1981 for the public purpose, notification under section 4(1) of the Act published only on 5.3.1992. The Collector passed award on 30.9.1993. Reference was answered by the reference Court on 29.1.1996. Claimants had taken out execution proceedings and the executing court had also issued orders attaching the immovable property of the State Government in April, 1997. Thus, when compensation was not forthcoming, writ petitions were filed, which were opposed by the learned Government Pleader taking preliminary objection as to the maintainability of the petition. Learned single Judge took note of the decision of a learned single Judge of this Court in **KASANI SUBBAMMA v.THE GOVERNMENT OF A.P** wherein compensation had not been paid even after a lapse of more than 11 years after passing of the award by the reference Court. The decision in **Billa Linga Reddy's** case (supra) was also referred where compensation was not paid for more than twelve years after deprivation of the property. Besides taking note of certain other decisions of the Supreme Court,

learned single Judge held that the High Court can always issue appropriate writs or direction compelling the State and its instrumentalities to act in accordance with law. The Court can always issue such directions whenever and wherever interests of justice require issuance of such directions and the fact that the petitioners had already availed the remedy available to them in law by filing execution petitions may not affect the jurisdiction of the High Court under Article 226 of the Constitution to issue directions to the respondents to deposit the amount of compensation determined. The learned single Judge, however, put a word of caution that the High Court cannot be allowed to be converted into an executing court for implementation of the awards and decrees passed by reference court under the Act. The jurisdiction and power conferred upon the Court under Article 226 is required to be exercised only where the interest of justice requires and it is not as if the High Court would entertain writ petition to implement and execute any and every order and decree passed by Court of competent Civil jurisdiction. The decree holders have necessarily to resort to the execution proceedings and get the decrees executed in accordance with law. The High Court would normally insist the decree holders to exhaust the alternative remedy available under the Code of Civil Procedure and the Act. It was further held that the High Court in exercise of its jurisdiction under Article 226 does not issue writs as a matter of course. Existence of alternative and efficacious statutory remedy is one of the considerations that would always be taken into consideration by the Court. But the fact that there is alternative and effective remedy available does not operate as a bar in whatsoever manner and affect the jurisdiction of the Court in the matter of exercise of its power under Article 226 of the Constitution.

Though before the Full Bench in **Vemula Prabhakar's** case (supra) decisions of this Court in **Billa Ranga Reddy's** case, **Sur Reddy's** case, **B. Govinda Reddy's** case and **Muralidhar Reddy's** case were referred to, the Full Bench only dealt with the decision in **Linga Reddy's** case and **Muralidhar Reddy's** case. While holding that the judgment in **Linga Reddy's** case did not lay down the correct law, the Full Bench also expressly overruled **Muralidhar Reddy's** case and other judgments taking the same view, but without referring to the reasons which were assigned in those cases. Incidentally, it may be mentioned that though **B. Govinda Reddy's** case was referred to by the Full Bench in para 2 of its Judgment, which had exhaustively dealt with the question and gave cogent reasons for entertaining a writ petition in cases where interest of justice requires notwithstanding that an alternative

remedy is available under the Act, the Full Bench has not considered and dealt with the said decision.

The question to be answered by the Full Bench was only about the maintainability of the writ petition as also the desirability of issuing writ to direct the Government to make payment. Whether or not powers of contempt could not be exercised by the High Court in the event of the State Government not complying with the direction to deposit the amount was not the subject matter referred for decision. However, the Full Bench dealt with that aspect more in coming to the conclusion.

The Full Bench rightly in para 4 of its judgment noted the proposition laid down by the Supreme Court in **WHIRLPOOL CORPN. V. REGISTRAR OF TRADE MARKS** on the question of maintainability of writ petition under Article 226 by the High Court when alternative remedy is available to the petition which has not been exhausted, saying that a writ in the nature of mandamus will be subject to exercise of sound judicial discretion. The Full Bench noticed that the general rule is that a writ of mandamus would not ordinarily be issued when there exists an adequate and efficacious remedy in respect of the same subject matter. Mandamus is important public law remedy and does not generally supersede legal remedies. But alternative remedy must be efficacious to accomplish the same purpose wherefor mandamus is sought for and must be equally convenient, beneficial and effective. Thus, it was held that there cannot be any doubt that alternative remedy is not an absolute bar to the maintainability of writ petition. It was also held by the Full Bench on reference being made to the decision of the Supreme Court in **K.S. RASHID & SON v. I.T.I. COMMISSION and C.A. ABRAHAM v. I.T. OFFICER AND CHAMPALAL v. I.T. COMMISSIONER, W.B.** that where the party has effective alternative remedy and he does not avail such remedy, the High Court require a strong case to be made out for entertaining a writ petition for issuance of appropriate directions. The Full Bench thereafter made reference to the provisions of Section 11, 12, 26, 28, 28-A, 31 and 53 of the Act and thus concluded that the State is liable to pay the amount of compensation determined to those who have been deprived of their property either from its consolidated fund or from any other fund and for the said purpose even coercive steps by way of attachment and sale of the Government property can be taken and such property need not be confined only belonging to the office of the

Collector (Land Acquisition). It was held that the award of the Civil Court is deemed to be decree, which has to be executed in the same manner as a decree of the Court, therefore, the alternative remedy provided under the Act to execute the award was effective and adequate. Ultimately it was concluded that writ petition filed under Article 226 of the Constitution seeking execution of the award made pursuant to reference under Section 18 of the Act, would not be maintainable and thus proceeded to hold that the decisions of this court in **Linga Reddy's** case and other judgments taking similar view do not lay down the correct law and thus overruled the same.

Full Bench made reference to a decision of the Division Bench of the Calcutta High Court in **STATE OF WEST BENGAL AND OTEHERS v. ANIL CHANDRA CHOWDHURY.** Incidentally, one of the members of the Full Bench of this Court in **Vemula Prabhakar's** case was a member constituting the Division Bench of the Calcutta High Court which has taken the correct view and which is in consonance with the law laid down in **Whirlpool's case**, but assigned its own reasons in not following the ratio therein. The Full Bench also noticed the judgment of this Court in W.P.No.26368 of 1996 decided on 27.2.2001 holding that writ petition seeking direction against the state to pay compensation wherein it was denied for number of years would be maintainable but observed that questions which had been raised before the full bench had not been raised in the said case and accordingly overruled the said decision also.

At this stage, we may take note of the observations, which the Supreme Court had to make in **K. KRISHNA REDDY AND OTHERS v. SPL. DY. COLLECTOR, LAND ACQUISITION UNIT-II** with respect to the apathy of those who are deprived of their property under the provisions of the Act and where payment of compensation determined by the statutory authorities is delayed for years together. Incidentally, the said case had arisen out of a decision of this Court in appeal. The land situated in Hasanpur of Karimnagar taluk was acquired for purpose of submergence under Lower Manair Dam reservoir Project. Notification under section 4(1) was issued on 24.3.1977. The Collector had made his award on 15.7.1978. On reference, the amount of compensation was enhanced. But, in appeal, the High Court set aside the order and remanded the reference to the civil court directing it to decide afresh in accordance with law after ignoring Exhibits A.4 and A.5. The matter was carried in appeal to the Supreme Court. The question whether or not Exhibits A.4 and A.5

were liable to be excluded from consideration was considered and decided by the Supreme Court. The point as to whether it was still necessary to keep the order of High Court of making remand undisturbed was also considered. On behalf of the claimants it was projected before the Supreme Court that claimants were small holders and agriculturists and they were hard pressed and unable to go for another round of litigation and were prepared to accept the amount of compensation as may be determined by the supreme Court. The Supreme Court then observed:

> We can very well appreciate the anxiety and need of claimants to get compensation here and now. No matter what it is. The lands were acquired as far back in 1977. One decade has already passed. Now the remand means another round of litigation. There would be further delay in getting the compensation. After all money is what money buys. What the claimants could have bought with the compensation in 1977 cannot do in 1988. Perhaps, not even one half of it. It is a common experience that the purchasing power of rupee is dwindling. With rising inflation, the delayed payment may lose all charms and utility of the compensation. In some cases, the delay may be detrimental to the interests of claimants. The Indian agriculturists generally have no avocation. They totally depend upon land. If uprooted, they will find themselves nowhere. They are left high and dry. They have no savings to draw. They have nothing to fall back upon. They know no other work. They may even face starvation unless rehabilitated. In all such cases, it is of utmost importance that the award should be made without delay. The enhanced compensation must be determined without loss of time. The appellate power of remand, at any rate ought not to be exercised lightly. It shall not be resorted to unless the award is wholly unintelligible. It shall not be exercised unless there is total lack of evidence. If remand is imperative, and if the claim for enhanced compensation is tenable, it would be proper for the appellate court to do modest best to mitigate hardships. The appellate court may direct some interim payment to claimants subject to adjustment in the eventual award.

As already stated earlier, the Full Bench did not appreciate the reasonings of the learned single Judge in **Govinda Reddy's** case wherein the learned single Judge also did refer to another decision of the Supreme Court in **MANGAT RAM TANWAR v. UNION OF INDIA** . Supreme Court in the said case expressed serious concern with regard to the attitude of the Governments in the matter of non-payment of compensation to the eligible claimants where acquisitions were long standing. Supreme Court observed:

> Exercise of the right of eminent domain is not in dispute. Petitioners have assumed themselves to be representatives of that group of land

owners whose lands are acquired in the exercise of the right of eminent domain but compensation is not paid for years together following the publication of the preliminary notification under S.4(1) of the Act or even after dispossession. It has been indicated that even in respect of acquisitions of 1957 and 1962 litigation has still been pending in the referee Court.

We would like to point out to the Union of India and the various States and Union territories which under the Land Acquisition Act have the powers to acquire properties of citizens in this Country either for themselves or on behalf of others that under the Amending Act of 1984 the liability for compensation has been substantially enhanced and the same has to be paid out of ultimately the state Coffers or the funds of the acquiring authority. Inaction and delay lead to increase of the said liability. It is, therefore, of paramount importance that public money should not be wasted by sitting over applications made by dissatisfied claimants asking for reference to the Court.

Serious view should be taken of the fact that application for reference are withheld by the Land Acquisition Officer without disposal for time beyond any explanation. Similarly, references when made under S.18 of the Act to the Court are treated as ordinary litigation and put into the pipeline for disposal in due course, which sometimes means 12 to 15 years. The Court is also socially accountable and delayed disposal of a reference which ultimately costs the States heavily has to be taken into account in planning disposal of Court proceedings.

We, therefore, direct that the State should ensure disposal of applications for reference to the Court when moved before the Land Acquisition Collector and though the statute has not given a period for disposing of such applications, these applications should be disposed of within three months of being made and the outer limit should not exceed six months. The Land Acquisition Officers should owe explanation to the superiors in the event of delay beyond three months and States should take appropriate care to issue clean and strict orders to the Land Acquisition Officers inviting their attention to the liability that might arise due to delay in disposal of such applications and State should occasionally even consider sharing of the liability with the Land Acquisition Officers personally either so that the responsibility of the Land Acquisition officers in the matter may be appropriately realised.

After noticing the aforementioned observations of the Supreme Court in **Govinda Reddy's** case, the learned Judge had remarked that it was high time that the State Governments should take serious note of the position and consider the desirability of constituting a High Level Committee to lay guidelines and issue suitable directions

to Land Acquisition Officers and all other concerned to take effective steps for depositing the amount of compensation awarded to the claimants whose lands are taken away under compulsory acquisition by the State Government. Learned single Judge also observed that what public purpose would it serve by utilising the land for irrigations projects on one hand and depriving the multitude of the people of their right to get their compensation for the lands taken over and utilised for such public purpose. It is common knowledge that the land owners whose lands were acquired for Srisailam Project, Sriram Sagar Project and Priyadarshini Jurala Project and even Nagarjuna Sagar have to get their compensation amounts and in some cases no amount is paid even after a quarter century.

In the aforementioned background, learned single Judge held that though this Court cannot be converted into an executing court to implement and execute the awards and decrees passed by the civil Courts, but this Court can always issue appropriate directions compelling the State and its instrumentalities to act in accordance with law and can always issue such directions whenever and wherever interest of justice require issuance of such directions. The Full Bench has not at all dealt with this judgment of learned single Judge while taking the view that writ petition is not maintainable when alternative remedy is available. The Full Bench, in our view, fell in grave error in observing that writ petition will not at all be maintainable under Article 226 of the Constitution in view of the availability of alternative remedy of filing execution petition to execute the award of the Civil Court. This view taken by the Full Bench is contrary to law laid down by Supreme Court even in **Whirlpool Corporation case** on which the Full Bench placed reliance.

In **Whirlpool case** (supra) Supreme Court considered the question of maintainability of Writ Petition under Article 226 of the Constitution of India where the appellant was issued a notice by the Registrar of Board of Trade Marks under S.56(4) of Trade and Merchandise Marks Act, 1958. The notice was challenged on the ground that the Registrar could not have issued the notice and thus had no jurisdiction. Supreme Court held that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The power can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari for enforcement of any of the fundamental rights contained in Part III of the Constitution but also for any other purpose. It was further held that under Article 226

of the Constitution, the High Court having regard to the facts of the case has discretion to entertain or not to entertain a writ petition. Generally High Court have certain restrictions imposed upon itself that in all the cases writ may or may not be entertained. One of the restrictions is that if an effective and efficacious remedy is available, High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by the Supreme court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. The Supreme Court in the said case did not go exhaustively of other exceptions to the rule of not entertaining writ petition when effective and efficacious alternative remedy is available to a party.

In **HARBANSLAL SAHNIA AND ANOTHER v. INDIAN OIL CORPN. LTD. AND OTHERS** Supreme Court was dealing with a case of termination of dealership of a person in petroleum products. High Court in the said case had dismissed the writ petition on the ground of availability of alternative remedy of having recourse to arbitration clause as per terms of agreement entered into between the parties. The Supreme Court held that in appropriate cases, in spite of availability of alternative remedy, the High Court may still exercise its writ jurisdiction at least in three contingences as noticed in **Whirlpool's case**.

In **SETH CHAND RATAN v. PANDIT DURGA PRASAD (D) BY LRS. AND OTHERS** it was held that when right or liability is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before seeking discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is no doubt a rule of policy, convenience and discretion and the Court may in exceptional cases issue a discretionary writ of certiorari.

In **ABL INTERNATIONAL LTD. AND ANOTHER v. EXPORT CREDIT GUARANTEE CORPORATION OF INDIA LTD. AND OTHERS** question of maintainability of writ petition arising out of contractual obligation was considered and it was held that, in appropriate cases, a writ petition as against the State or an instrumentality of the State arising out of contractual obligation is maintainable. Merely because some disputed questions of fact arise for consideration, same

cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule. A writ petition involving a consequential relief of monetary claim is also maintainable. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the Court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case has discretion to entertain or not to entertain a writ petition. The court has imposed upon itself certain restrictions in the exercise of this power. And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.

Article 226 of the Constitution confers on all the High Courts very wide powers in the matter of issuing writs of the nature of habeas corpus, mandamus prohibition, writ of certiorari for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purposes. Under the first part, a writ may be issued under Article 226 of the Constitution only after a decision that the aggrieved party has a fundamental right and that it has been infringed. Under the second part it may be issued only after finding that the aggrieved party has a legal right which entitles him to any of the aforesaid writs and that such right has been infringed. Reference in this regard may be had to the decisions of the Supreme Court in **RASHID, K.S. v. INCOME-TAX INVESTIGATION COMMISSIONER,** STATE **OF ORISSA v. RUNGTA, CALCUTTA GAS CO. v . STATE OF WEST BENGAL and K. VENKATACHALAM v. A. SWAMICKAN**

The above discussion would lead us to hold that the power, which the High Court exercises under Article 226 of the Constitution, is a discretionary power. Though the power is discretionary and no limits can be placed upon such discretion, it has been held judicially that power must be exercised along recognised lines and not arbitrarily. There are no limits to such power and has to be exercised judiciously. However, while excising this power courts have imposed certain limits in exercise of those powers, which are known as self-imposed limitations. One of the self-imposed restrictions is that High Court generally refrains from entertaining a writ petition when

there is adequate and efficacious alternate remedy available to a party, and, when such alternate remedy available is a statutory remedy, such statutory remedy has been duly exhausted. Availability of such alternate and efficacious or statutory remedy itself is not a bar in entertaining a writ petition in the given facts and circumstances. We need not multiply the circumstances in which such discretionary power may be exercised by the Court in such matters despite availability of such alternate, adequate and efficacious remedy. But the limits as noticed in **B. Govinda Reddy's case** supra by a learned single Judge of this Court are sufficient that in cases arising out of the Act where the amount of compensation, finally determined has not been paid, a person must first resort to the alternate efficacious remedy of taking out execution and when despite taking out execution proceedings, if there is any delay caused on the part of authorities, resort can be had to filing of a writ petition in this Court and, this Court, while exercising its discretionary jurisdiction, in appropriate cases, may issue directions for immediate deposit of the amount of compensation by the State Government or the authorities on whose behalf the land has been acquired.

In view of the above, we hold that the view taken by the Full Bench in **Vemula Prabhakar's case** that in a matter arising out of the Act, writ petition under Article 226 of the Constitution seeking direction against the State to deposit the amount of compensation determined which has finally been settled will not be maintainable is bad and contrary to the principles of law as noticed hereinabove and accordingly we overrule the same and hold that the view taken by the learned single Judge in **B. Govinda Reddy's case** is the correct exposition of law.

The reference is answered accordingly.

DEVINDER GUPTA, C.J

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B. SUDERSHAN REDDY, J

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L. NARASIMHA REDDY, J

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C .V. RAMULU, J

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B. SESHASAYANA REDDY, J

March, 2005

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